

Attorney Docket No.: J6834(C)
Serial No.: 10/667,922
Filed: September 22, 2003
Confirmation No.: 9900

REMARKS

Applicant's attorney thanks the Examiner for the courtesy of an Office Interview held June 12, 2007. The following comments review those presented at the Interview and are intended to be responsive to the outstanding Office Action.

Applicant recognizes the reversal of the Restriction Requirement and appreciates the Examiner having thoughtfully reviewed the traversal arguments.

Independent claims 1, 10 and 11 have been amended to emphasize that compositions of this invention are solids. Based on the office action rejections, it appeared to applicant that the Examiner had not given patentable weight to the preamble term "solid". Now "solid" appears after the "comprising" which should leave no doubt about the physical nature of the claimed compositions.

The independent claims have been amended pursuant to the Examiner's suggestion at the Office Interview to incorporate the feature of *zea mays* originally found in claim 2. Further, applicant has added claims 12, 14 and 16 to emphasize the structural difference between "destructured" starch other types of starch. For similar reasons, claims 13, 15 and 17 have been submitted. Support is found in the specification at page 4, paragraphs [00011] and [00012] and page 5, paragraph [00013].

Claims 1-11 were rejected under 35 U.S.C. § 112, second paragraph. The phraseology "in an amount sufficient to provide a cosmetic benefit" was said to be vague and indefinite.

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Applicant has amended the independent claims to specify that the amount of at least one cosmetic agent ranges from about 0.001 to about 50% by weight. Support is found at page 17, paragraph [00032].

Claims 1, 4 and 7-11 were rejected for obviousness-type double patenting over claims 1-2 of the U.S. patent application publication 2004/0241128 A1 with Serial No. 10/697,608. Applicant traverses this rejection.

The cited document refers to chemically modified starches which may either be non-gelatinized or pre-gelatinized. These types of starches are quite different from the presently claimed destructurized starch element (i) of the independent claims. A second distinction is that the present claims focus upon solid cosmetic compositions. By contrast, the cited document says nothing with respect to solid compositions. In fact, the opposite is found in the cited document. Note page 1 [0002] which identifies the invention as concerning a cosmetic emulsion base. Emulsions are liquids. There is neither obviousness nor conflict between the cited document and applicant's claimed invention.

Claims 1-11 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent 5,925,380 (Roulier et al.) in view of U.S. Patent 6,248,338 (Muller et al.). Applicant traverses this rejection.

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Roulier et al. discloses an expanded solid composition whose matrix comprises a cellular network formed from a starch-rich product. Yet unlike the present invention, this reference fails to disclose destructurized forms of starch.

Roulier et al. is very concerned that when the materials of their invention are extruded, care is taken to process at relatively low temperatures. See column 1 (lines 24-29) and column 5 (lines 34-42 and 49-57). Clearly there is no destructurization happening.

Applicant's independent claims require the presence of a fragrance deposited onto the destructurized starch. Roulier et al. is silent with respect to any fragrance. Applicant recognizes that fragrance is a well known cosmetic ingredient. The aforementioned remarks are solely intended to emphasize that the skilled person in the art would have no teaching from this reference of any advantage in placing fragrance onto starch.

Muller et al. is similarly deficient. This reference is concerned with pre-gelatinized starches. There is no disclosure of destructurized starches in either Roulier et al. or Muller et al. For this reason, the references do not constitute a *prima facie* case of obviousness.

Even if a *prima facie* were considered to have been made, applicant has distinguished destructurized starches from those of the non-destructurized type. Attention is drawn to Example 21. Therein it has been established that fragrance

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deposited onto the destructureized starch delivers scent in a more prolonged manner than ordinary starch. These results were unexpected.

In view of the foregoing amendment and comments, applicant requests the Examiner to reconsider the rejections and now allow the claims.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Milton L. Honig", is written over a horizontal line.

Milton L. Honig
Registration No. 28,617
Attorney for Applicant(s)

MLH/sm
(201) 894-2403